

ORIGINAL



EX PARTE OR LATE FILED
The CITY OF DAYTONA BEACH

~~~~~ "THE WORLD'S MOST FAMOUS BEACH" ~~~~~

October 30, 2000

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Office of the City Manager

Magalie Roman Salas  
Secretary, Federal Communications Commission  
445 Twelfth Street, S.W., TW B204  
Washington, D.C. 20554

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Re: Notice of Written *Ex Parte* Presentation  
Applications of America Online, Inc and Time Warner, Inc.,  
for Transfers of Control (CS Docket No. 00-30)

Dear Ms. Salas:

I am submitting the enclosed resolution to the Commission on behalf of the City of Daytona Beach in accordance with Section 1.1206(b)(2) of the FCC's rules. This resolution concerns the City's decision to withhold consent to Time Warner's proposed transfer of its cable franchise for Daytona Beach to AOL Time Warner, the new company which Time Warner and AOL propose to create.

The City is submitting this resolution to make sure that the Commission is fully aware of the City's position on the proposed transfer and its concerns with regard to the proposed merger. It is also submitting this resolution to clarify the record with regard to the status of the Time Warner's request to the City for approval of the transfer of its franchise to AOL Time Warner.

Time Warner claims in a September 14 letter to the Commission that "[transfer] approvals have been obtained (or no approvals were necessary) with respect to communities serving 12,464,183 subscribers out of approximately 12,510,363 total subscribers served by Time Warner Cable, for a 99.63% approval rate." This letter further states that "three communities, representing a total of 37,200 subscribers have denied the transfer." (Time Warner provides cable service in Daytona Beach to about 15,000 homes and another 16,000 housing units and hotel rooms through bulk service contracts.) Based on this letter, it is difficult to determine how Time Warner has characterized the City's position in its communications with the Commission. In fact, the City's position is simple: it has withheld consent to the proposed transfer from Time Warner to AOL Time Warner.

The basis for the City's decision to withhold consent is that Time Warner did not comply with Section 76.502(a) of the Commission's rules. This provision of the FCC's rules requires a franchising authority to complete action on a transfer application within 120 days of the company's request only if the company submits a "completed" Form 394. The City reviewed Time Warner's Form 394 and determined that the application did not constitute a "completed" application. The basis for this conclusion was that Time Warner's application did not contain basic information required by the FCC's form.

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Magalie Roman Salas  
October 30, 2000  
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In particular, Time Warner's application did not provide any information as to how the company's operations and services would change as a result of implementation of the proposed merger although FCC Form 394 requires that it provide such information. In other words, Time Warner asked the City to approve the proposed transfer before the company knew whether the Commission and the Federal Trade Commission would approve the proposed merger or what conditions would apply to the new company's operations if the merger were approved.

The City cannot properly assess or take action on Time Warner's transfer request until the Commission and other government agencies have completed their review of the proposed merger and determined what conditions and restrictions to impose upon the proposed new company. Only then will the City be in a position to determine whether the proposed transfer is in the community's interest and whether additional conditions or requirements should be established at the local level to protect consumer interests.

Time Warner has objected to the City's conclusion that the company's application does not constitute a "completed" Form 394. The City has responded on several occasions by explaining its position and noting that it is the City's responsibility to determine whether or not a transfer application is "completed." Time Warner's approach would effectively preclude meaningful review of the proposed transfer and its impact on the community. If Time Warner's approach were accepted, the City would be required to approve or disapprove the transfer request without benefit of basic information as to the changes in system operations and services that would be associated with the merger. The practical effect of this position would be to deny the City the ability to make an informed decision as to whether the proposed transfer is in the community's interests.

Sincerely,



Richard F. Quigley  
Assistant City Manager  
Support/Technology Services

RFQ/p  
SAL0001  
154/Time Warner / AOL  
Enclosure  
Cc: attached list

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October 30, 2000

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cc: William E. Kennard  
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Royce Dickens  
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# The CITY OF DAYTONA BEACH

"THE WORLD'S MOST FAMOUS BEACH"

October 23, 2000

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Office of the City Manager

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Return Receipt

John Rigsby  
President, Central Florida Division  
Time Warner Communications  
2251 Lucien Way, Suite 320  
Maitland, Florida 32751

Dear Mr. Rigsby:

The City Commission, on October 18, 2000, adopted the attached Resolution No. 00-470 and expects Time Warner to comply with its provisions.

Sincerely,

Richard F. Quigley  
Assistant City Manager  
Support/Technology Services

RFQ/s  
RIG0010  
151/TWC/AOL Transfer  
cc: Honorable Mayor and City Commission  
Carey F. Smith, City Manager  
Robert G. Brown, City Attorney  
Ben Gross, Assistant City Attorney  
Cynthia M. Pols & Catharine B. Rice, InPUT

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RESOLUTION NO. 00-470

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A RESOLUTION REGARDING THE PROPOSED TRANSFER OF  
THE CABLE FRANCHISE FROM TIME-WARNER TO AOL  
TIME WARNER; AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, in January 2000, Time-Warner and AOL announced plans to merge and form a single company, AOL Time Warner, which would combine the world's largest Internet Service company (AOL) with the world's largest entertainment company and second largest cable company (Time-Warner); and

WHEREAS, if the proposed merger is approved by government agencies, the new company will be the largest media company in the world, and will be in a position to control the market for high-speed Internet service in the City of Daytona Beach and countless other communities and emerging markets for interactive television and other services associated with the convergence of Internet and television technology and to further increase its market power in the City with regard to standard cable service; and

WHEREAS, in February 2000, Time-Warner submitted a request to the City for approval of a transfer of the cable franchise from Time-Warner to the proposed new company, although government agencies had just begun a review of the proposed merger and had not approved the merger; and

WHEREAS, Time-Warner's written application to the City for approval of the proposed transfer was incomplete because it did not contain the information required by federal regulation concerning the changes that would take place in the company's operations in the City, if the proposed merger were implemented; and

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WHEREAS, various government agencies, including the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC), have been reviewing the proposed merger for many months and soon will decide whether to allow the merger to go forward and what conditions and restrictions to apply to the new company's cable and other operations to ensure fair competition, and to limit the new company's ability to abuse its market position; and

WHEREAS, many companies, including Disney/ABC and BellSouth, and other interests have opposed the merger and have asked government agencies to reject the proposed merger and/or to impose sweeping restrictions on the operations of the proposed new company to ensure fair competition and prevent abuses of market power in cable television, high-speed Internet service, and interactive television markets; and

WHEREAS, in June 2000, after review of Time-Warner's transfer application and the ongoing FCC and FTC proceedings concerning the proposed AOL-Time Warner merger, the City advised Time-Warner that its application was not a completed application because it was submitted before government agencies had completed review of the proposed merger and established ground rules for the new company's operations, and did not contain any information concerning changes in services and operations that would result from implementation of the merger; and

WHEREAS, because these federal ground rules are unknown and the merger has not been approved by government agencies, the City cannot determine whether the proposed merger is in the public interest, what affect it will have on the City, and whether the City should impose conditions on the new company's operations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DAYTONA BEACH, FLORIDA:

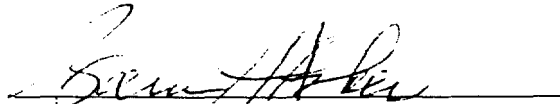
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SECTION 1. Consent of the proposed transfer of the cable franchise from Time-Warner to AOL Time Warner is withheld, and will not be given until such time as Time-Warner submits a completed transfer application which provides all information needed for the City to properly consider the request.

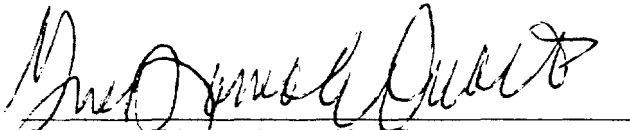
SECTION 2. Following completion of government review of the proposed merger, Time-Warner is directed to submit a completed transfer application which specifies any conditions and restrictions imposed on the merger and AOL-Time Warner's plans for complying with all such conditions and restrictions.

SECTION 3. The City will consider Time-Warner's request for transfer consent following the company's submission of a completed transfer application to the City and the City's assessment of the proposed transfer and its impact on the City.

SECTION 4. This Resolution shall take effect as provided by law.

  
BARON H. ASHER  
Mayor

ATTEST:

  
GWEN AZAMA-EDWARDS  
City Clerk

Adopted: October 18, 2000

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FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

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 MICHAEL W. RICHARDS\*

September 14, 2000

\* VA BAR ONLY  
 \*\* WA BAR ONLY  
 \*\*\* HI AND IL BAR ONLY  
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 \*\* IL BAR ONLY  
 \*\*\* NY BAR ONLY

Ms. Magalie R. Salas  
 Secretary  
 Federal Communications Commission  
 445 12th Street, S.W. - The Portals  
 TW-B204  
 Washington, D.C. 20554

Re: Notice of Written *Ex Parte* Presentation  
 Applications of America Online, Inc.  
 and Time Warner Inc. for Transfers of Control  
 CS Docket No. 00-30 /

Dear Ms. Salas:

On behalf of Time Warner Inc. ("Time Warner"), submitted herewith, pursuant to Section 1.1206(b)(2) of the Commission's rules, is an original and one copy of information provided in response to a request for an update on the status of local franchising authority approvals in connection with the America Online, Inc. ("AOL")/Time Warner merger.

AOL and Time Warner have submitted FCC Form 394 in connection with the proposed merger to over 1,150 local franchising authorities. As of today's date, approvals have been obtained (or no approvals were necessary) with respect to communities serving approximately 12,464,183 subscribers out of approximately 12,510,363 total subscribers served by Time Warner Cable, for a 99.63% approval rate.

Three communities, representing approximately 37,200 subscribers, have denied the transfer. While Time Warner is confident that such denials are invalid, *inter alia*, because they

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Ms. Magalie R. Salas, Secretary

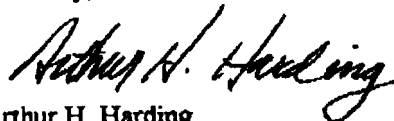
September 14, 2000

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have failed to identify any evidence that AOL Time Warner is legally, technically or financially unqualified to assume control of the applicable cable franchisee and/or because they attempt to impose unlawful franchise transfer conditions, Time Warner is making every effort to avoid litigation and is continuing discussions with each community designed to achieve reconsideration of such denials. One community, representing approximately 8,985 subscribers, has not yet acted on the pending Form 394. Time Warner expects approval in such community this month.

Kindly direct any questions regarding this matter to the undersigned.

Sincerely,



Arthur H. Harding  
Counsel for Time Warner Inc.

Enclosure

cc: Deborah Lathen, Esq.  
Royce Dickens, Esq.  
Peter Friedman, Esq.  
Linda Senecal, Esq.  
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